IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4697 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABHAI DARBABHAI CHHARA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ASIM J PANDYA for Petitioner

Mr.A.J. Desai, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/02/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. Asim Pandya for the petitioner and learned A.G.P. Mr. A.J. Desai, on behalf of the respondents nos.1, 2 and 3.

1. The detention order dated 21-5-1999 passed by the Commissioner of Police, Ahmedabad (the respondent no.1) against the petitioner-detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the petitioner -detenu under Sec.9(1) of "PASA" , copy of which is produced at Annexure "C" inter alia indicate that in all seven prohibition cases are filed against the petitioner at Sabarmati Police Station and Nashabandi Police Station (West) between the period from 8-2-1998 and 12-6-1998. That in each case countrymade liquor has been seized from the possession of the petitioner. That out of the said seven cases, the first four cases are pending for trial in Court while the remaining three cases are pending for investigation.

2.1 The grounds of detention further indicate that two witnesses have given statements dated 20-5-1999 and 21-5-99 respectively regarding bootlegging activities of the petitioner and have related the alleged incidents dated 28-4-1999 and 5-5-1999 respectively.

3. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of " PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that impugned order suffers from the vice of non application of mind inasmuch as the detaining authority while passing the impugned order has failed to consider the less drastic remedy of opposing and/or claiming cancellation of bail under Sec.437(5) of the Cr.P.C., and as such, the subjective satisfaction arrived at by the detaining authority stands vitiated rendering the impugned order bad in law.

6. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. (1995 (2) G.L.H. 1134), the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5), Cr.P.C.

amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram:C.K.Thakkar & A.L.Dave,JJ.).

6. On scrutiny of papers, it appears that the respondent no.1 as detaining authority has failed to consider less drastic remedy like opposing and/or claiming cancellation of bail. It is observed in the penultimate paragraph of of the grounds of detention that the detenu is on bail in respect to cases registered at serial nos.1 to 4 while he is in judicial custody in respect to cases at serial nos.5 to 7 however, by passage of time, he would apply for bail and after getting himself released on bail he is likely to indulge into antisocial activity, and thereby, impugned order is passed. The said observation itself suggests that the impugned order appears to be based on apprehension and not on facts. It also suggests that the detaining authority has failed to consider the aspect of less drastic remedy like opposing and/or claiming cancellation of bail as available under Sec.437(5) of the Cr.P.C. which has vitiated the subjective satisfaction and rendered the impugned order invalid.

7. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 21-5-1999 passed by the Commissioner of Police, Ahmedabad (respondent no.1) is hereby quashed and set aside. The petitioner-detenu-Bhikhabhai Darbhabhai Chhara is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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